

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES
CIVILIAN DRUG TESTING PROGRAM

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I. INTRODUCTION

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all federal employees to refrain from using illegal drugs on or off duty. In a letter to all executive branch employees dated October 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all federal workers.

The Executive Order recognized that illegal drug use is seriously impairing a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the nation, the federal government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Uniformed Services University of the Health Sciences (USUHS) is concerned with the well-being of its employees, the successful accomplishment of USUHS missions, and the need to maintain employee productivity. The intent of the policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with federal service.

On July 11, 1987, Congress passed legislation affecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C., 7301 note (1987), (hereafter, the "Act"), in an attempt to establish uniformity among federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program.

The purpose of the USUHS Drug-Free Workplace Plan is to set forth objectives, policies, procedures, and implementation guidelines, to achieve a drug-free Federal Workplace, consistent with the Executive Order and Section 503 of the Act.

B. Statement of Policy

The USUHS, as a result of its Biomedical Education and Research responsibilities, has a compelling obligation to eliminate illegal drug use from its workplace.

The University's Drug-Free Workplace Plan is designed to inform our faculty, staff and students of the significant personal and societal health hazards resulting from drug abuse;

provide opportunities for our personnel and their eligible dependents to voluntarily obtain rehabilitation assistance with drug abuse problems; and detect those persons in designated sensitive positions who abusively use certain controlled substances.

Previously, USUHS has experienced loss-time accidents and loss of skilled personnel due to abuse of controlled substances. Such losses are tragedies, not only for the individuals involved and their families but also for the Department of Defense and American society as a whole. The University's preeminent position in Military Medicine education and research makes it incumbent upon us to set an example for the Department of Defense in obtaining a drug-free work force, and to do so with minimal infringement of individual rights.

The University is fully committed to support the goals of Executive Order 12564 and to do so with sensitivity and firmness. Not only is this policy mandatory because of the Executive Order, it would be a disservice to all USUHS personnel not to be so committed.

The mark of a successful drug-free workplace program also depends on how well the USUHS can inform our employees of the hazards of drug use, and on how much assistance it can provide drug users. Equally important, is the assurance to employees that personal dignity and privacy will be respected in reaching the University's goal of a drug-free workplace. Therefore, this plan includes policies and procedures for: (1) employee assistance; (2) supervisory training; (3) employee education; and (4) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

C. Nature, Frequency, and Type of Drug Testing to be Instituted

Section 503 of the Act requires the USUHS Plan to specify the nature, frequency, and type of drug testing to be instituted. The University Plan includes the following types of drug testing: (1) Applicant testing; (2) Random testing of sensitive employees in testing designated positions; (3) Reasonable suspicion testing; (4) Accident or unsafe practice testing; (5) Voluntary testing, and (6) Testing as part of or as a follow-up to counseling or rehabilitation. The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at Section XII (C). The President reserves the right to increase or decrease the frequency of testing based on the University's mission, availability of resources, and experience in the program, consistent with the duty to achieve a drug free workplace under the Executive Order.

D. Drugs for Which Individuals Are Tested

Section 503 of the Act requires the USUHS Plan to specify the drugs for which individuals shall be tested. These are listed in Appendix B.

E. Scope

When each Executive Branch agency as specified in Section 503 (a) (2) of the Act has complied with the provisions of Section 503 (a) of the Act, this order shall be effective immediately for all components of the University.

F. References

1. Authorities

- a. Executive Order 12564;
- b. Executive Order 10450;
- c. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987);
- d. Scientific and Technical Guidelines for Drug Testing Programs, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), Department of Health and Human Services (HHS), as amended;
- e. Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), Department of Health and Human Services (HHS), as amended;
- f. Civil Service Reform Act of 1978, P.L. 95-454;
- g. 42 CFR Part 2, establishing requirements for assuring the confidentiality of alcohol and drug-abuse patient treatment records;
- h. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain;
- i. 49 CFR Part 10, implementing the Privacy Act of 1974 within the Uniformed Services University of the Health Sciences;

- j. Federal Employees Substance Abuse Education and Treatment Act of 1986, P.L. 99-570.

2. Guidance

- a. Office of Personnel Management (OPM), Federal Personnel Manual (FPM) Letters 792-16 (November 28, 1986), and 792-17 (March 9, 1987), setting forth guidelines for Federal civilian agencies in establishing a drug-free workplace pursuant to Executive Order 12564;
- b. FPM Chapter 792, Federal Health and Counseling Programs, providing guidance to Federal agencies in establishing alcoholism and drug abuse programs (subchapter 5) and employee counseling services programs (subchapter 6) for Federal employees with alcohol or drug problems;
- c. FPM Supplement, Chapter 792-2, providing guidance for developing and maintaining appropriate prevention, treatment and rehabilitation programs and services for alcoholism and drug abuse among Federal employees;
- d. USUHS Instruction 1003, "Civilian Employee Alcoholism and Drug Abuse Program," 10 September 1982.

II. DEFINITIONS

- A. **Applicant** means any individual tentatively selected for employment with USUHS and includes any individual in the University who has tentatively been selected for placement in a testing designated position and who has not, immediately prior to the selection, been subject to random testing.
- B. **Employee Assistance Program (EAP)** means the University-based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.
- C. **Employee Assistance Program Administrator (EAPA)** means the individual responsible for ensuring the development, implementation and review of the agency EAP.
- D. **Employee Assistance Program Coordinator (EAPC)** means the individual designated by the Employee Assistance Program Administrator responsible for implementing and operating the EAP within USUHS by providing counseling, treatment, and education services to employees and supervisors regarding the University's EAP.
- E. **Medical Review Official (MRO)** means the individual responsible for receiving laboratory results generated from the USUHS Drug-Free Workplace Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.
- F. **Illegal Drugs** means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of controlled substance pursuant to a valid prescription or other uses authorized by law.
- G. **Management Official** means an employee required or authorized by USUHS to formulate, determine, or influence the policies of the University. 5 U.S.C. 7103 (a)(11).
- H. **Random Testing** means a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform-unannounced testing of testing designated employees occupying

a specified area, element or position, or may be statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

I. Employees in Sensitive Positions mean:

1. Employees in positions designated by the President, USUHS, as Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual or employees in positions designated by the President, USUHS, as sensitive in accordance with Executive Order No. 10450, as amended;
2. Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the President, USUHS under Section 4 of Executive Order No. 12356;
3. Individuals serving under Presidential appointments;
4. Law Enforcement officers as defined in 5 U.S.C. 8331(20) and 8401(17); or
5. Other positions that the President, USUHS determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

J. Supervisor means an employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgement. 5 U.S.C. 7103 (a)(10).

K. Testing Designated Positions means employment positions within USUHS which have been designated for random testing under Section IX B. of this plan.

L. Verified Positive Test Result means a test result that has been screened positive by an FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by HHS), evaluated by the Medical Review Official and determined by him to be unjustified under Section X of this plan.

III. EMPLOYEE ASSISTANCE PROGRAMS

A. Function

The USUHS EAP plays an important role in preventing and resolving employee drug use by: demonstrating the University's commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically, the EAP shall--

1. Provide initial assessment counseling and referral assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive, and monitor the employees' progress through treatment and rehabilitation;
2. Coordinate needed education and training to all levels of the University community on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues;
3. Ensure that confidentiality of test results and related medical treatment and rehabilitation records is maintained in accordance with Section XIV;

B. Referral and Availability

Any employee found to be using drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide initial assessment counseling and referral assistance for all referrals, as well as coordinating education and training regarding illegal drug use. In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of prior to completion of the program. ~~The decision of the EAP Administrator prior to completion of the program.~~ ^{typo} The decision of the EAP Administrator shall be final and shall not be subject of further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor referral shall not constitute either an excuse for

continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

C. Leave Allowance

Employees shall be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session, up to a maximum of eight (8) hours, during the assessment/referral phase of rehabilitation. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

D. Records and Confidentiality

All EAP operations shall be confidential in accordance with Section XIV of the Plan relating to records and confidentiality.

E. Structure

The USUHS Student Health Clinic shall be responsible for oversight and implementation of the USUHS EAP, and will provide, with the support of the President, USUHS, high level direction and promotion of the EAP.

Initial interviews, case reviews, and referral will be provided to USUHS personnel with in-house resources in the USUHS Student Health Clinic. Treatment, rehabilitation, and follow-up will not be provided by USUHS Student Health but will be provided by contractual arrangements with appropriate civilian medical facilities in the District of Columbia and nearby suburban Maryland and Virginia areas.

IV. SUPERVISORY TRAINING

A. Objectives

As supervisors have a key role in establishing and monitoring a drug-free workplace, USUHS shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to understand--

1. Departmental policies relevant to work performance problems, drug use, and the University's EAP;
2. The responsibilities of offering EAP services;
3. How employee performance and behavioral changes should be recognized and documented;
4. The roles of the medical staff, supervisors, personnel, and EAP personnel;
5. The ways to use the University's EAP;
6. How the EAP is linked to the performance appraisal and the disciplinary process; and
7. The process of reintegrating employees into the work force.

B. Implementation

The Civilian Personnel Office shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the University's Drug-Free Workplace Plan.

C. Training Package

Supervisory training shall be required of all supervisors and may be presented as a separate course, or be included as part of an ongoing supervisory training program. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include--

1. Overall Departmental policy;
2. The prevalence of various employee problems with respect to drugs and alcohol;
3. The EAP approach to handling problems;

4. How to recognize employees with possible problems;
5. Documentation of employee performance or behavior;
6. How to approach the employee;
7. How to use the EAP;
8. Disciplinary action, and removals from sensitive positions;
9. Reintegration of employees into the work force; as required by Section 5(c) of the Executive Order; and
10. Written materials which the supervisor can use at the work site.

V. EMPLOYEE EDUCATION

A. Objectives

The EAP Administrator shall offer drug education to all USUHS employees. Drug education should include education and training to all levels of the University on--

1. Types and effects of drugs;
2. Symptoms of drug use, and the effects on performance and conduct;
3. The relationship of the EAP to the drug testing program; and
4. Other relevant treatment, rehabilitation, and confidentiality issues.

B. Means of Education

Drug education activities may include:

1. Distribution of written materials;
2. Videotapes;
3. Lunchtime employee forums; and
4. Employee drug awareness days.

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Coordinator USUHS shall have a Drug Program Coordinator (DPC) assigned to carry out the purposes of this plan. The DPC shall be responsible for implementing, directing, administering, and managing the drug program within the University. The DPC shall serve as the principal contact with the laboratory in assuring the effective operation of the testing portion of the program. In carrying out this responsibility, the DPC shall, among other duties:

1. Arrange for all testing authorized under this order;
2. Insure that all employees subject to random testing receive individual notice as described in Section VII B. of this Plan, prior to implementation of the program, and that such employees return a signed acknowledgement of receipt form;
3. Document, through written inspection reports, all results of laboratory inspections conducted;
4. Coordinate with and report to the President, USUHS on DPC activities and findings that may affect the reliability or accuracy of laboratory results;
5. In coordination with the EAP Administrator, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation.

B. Employee Assistance Program Administrator

The EAP Administrator shall:

1. Upon receipt of a verified positive test result from the MRO, transmit the test result to the appropriate management official empowered to initiate disciplinary action;
2. Assume the lead role in the development, implementation, and evaluation of the EAP;
3. Supervise and designate the University EAP coordinator and counselors.
4. Advise USUHS components on the submission of annual statistical reports, and prepare consolidated reports on the University's EAP activity.

5. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employees signature on this document; and
6. In making referrals, consider the--
 - a. Nature and severity of the problem;
 - b. Location of the treatment;
 - c. Cost of the treatment;
 - d. Intensity of the treatment environment;
 - e. Availability of inpatient/outpatient care;
 - f. Other special needs, such as transportation and child care;
 - g. The preferences of the employee.

C. Employee Assistance Program Coordinator

The Employee Assistance Program Coordinator

1. Implement and operate the EAP within USUHS.
2. Coordinate counseling and referral services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;
3. Coordinate with the President, USUHS, the MRO and supervisors, as appropriate;
4. Work with the DPC to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;
5. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
6. Monitor the progress of referred employees during and after the rehabilitation period;
7. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;

8. Maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs, and include the following information on each such organization:
 - a. Name, address, and phone number;
 - b. Types of services provided;
 - c. Hours of operation, including emergency hours;
 - d. The contact person's name and phone number;
 - e. Fee structure, including insurance coverage;
 - f. Client specialization; and
 - g. Other pertinent information.

D. Employee Assistance Counselors

The Employee Assistance Counselors shall--

1. Serve as the initial point of contact for employees who ask or are referred for counseling;
2. Be familiar with all applicable law and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program;
3. Be qualified by the EAP Administrator and be trained in counseling employees in the occupational setting, and identifying drug use.

E. Medical Review Official USUHS shall have an MRO assigned to carry out the purposes of this Order. The MRO shall, among other duties:

1. Receive all laboratory test results;
2. Assure that an individual who has tested positive has been afforded an opportunity to justify the test result in accordance with Section XIII. D. of this Plan;
3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to President, USUHS, including a positive drug test result form indicating that the positive result is "unjustified," together with all relevant documentation and a summary of findings;

4. Confirm with the appropriate personnel official whether an individual who has been tentatively selected for employment with USUHS has obtained a verified positive test result;
5. Coordinate with and report to the President, USUHS on all activities and findings on a regular basis.

F. Supervisors

Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. Except as modified by the President, USUHS to suit specific program responsibilities, first-line supervisors shall:

1. Attend training sessions on illegal drug-use in the workplace;
2. Initiate a reasonable suspicion test, after first making appropriate factual observations and documenting those observations and obtaining approval from the higher-level supervisor;
3. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use;
4. Initiate appropriate disciplinary action upon a finding of illegal drug use; and
5. In conjunction with personnel specialists, assist higher-level supervisors and the EAP Administrator in evaluating employee performance and or personnel problems that may be related to illegal drug use.

A Higher-Level supervisor shall review and concur, in advance, with all reasonable suspicion tests ordered under their supervision.

G. Implementation

At the direction of the President, USUHS, each Department Chairperson and Activity Head shall implement the Drug-Free Workplace Plan within his/her activities, and ensure that the Plan is efficiently and effectively accomplished in accordance with this order and all other applicable regulations.

H. General Program/Structural Provisions

The President, USUHS shall develop implementation procedures to enable Department Chairperson and Activity Heads to efficiently and swiftly implement all aspects of this order, taking into account the unique geographical, personnel, budgetary and other relevant factors of the University. Such procedures will permit USUHS implementation to proceed independently. Testing may proceed under this order as soon as the operating site is prepared to commence testing. Such procedures shall also encourage cooperation and coordination among with other DoD components so as to conserve resources and efficiently implement this order.

I. Government Contractors

Wherever existing facilities are inadequate to implement this order, the DPC, USUHS shall:

1. Act as Contracting Officer for the administration of all related contracts;
2. Ensure that contractors chosen to perform the drug screening tests are duly certified pursuant to the HHS guidelines and that all contracts conform to the technical specifications of the HHS guidelines; and
3. Establish, by contract or with University employees as deemed appropriate, the positions and specific responsibilities of the DPC and the MRO as required by the HHS guidelines.

VII. NOTICE

A. General Notice

General notice from the President, USUHS announcing the testing program, as required by the Executive Order Section 4(a), will be provided to all employees no later than sixty (60) days prior to the implementation date of the plan. The notices shall be provided immediately upon completion of the congressional certification procedures pursuant to sections 503(a)(1)(A), 503(a)(1)(B), and 503(a)(1)(C) of the Act, and shall explain:

1. The purpose of the Drug-Free Workplace Plan;
2. That the plan will include both voluntary and mandatory testing;
3. That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position has been designated a testing designated position;
4. The availability and procedures necessary to obtain counseling and rehabilitation through the EAP;
5. The circumstances under which testing may occur;
6. That opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug;
7. That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO;
8. That positive test results verified by the MRO may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action;
9. That all medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient.

B. Individual Notice

In addition to the general notice, ^{an} individual notice will be distributed to all employees in testing designated positions explaining, in addition to the information provided above:

1. That the employee's position has been designated a "testing designated position";
2. That the employee will have the opportunity to voluntarily identify himself as a user of illegal drugs and to receive counseling or rehabilitation, in which case disciplinary action is not required;
3. That the employee's position will be subject to random testing no sooner than thirty days.

C. Signed Acknowledgement

Each employee in a testing designated position shall be asked to acknowledge in writing that --

The employee has received and read the notice which states that the employee's position has been designated for random drug testing; and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal.

If the employee refuses to sign the acknowledgement, the employee's supervisor shall note on the acknowledgement form that the employee received the notice. This acknowledgement shall be centrally collected for easy retrieval by the Civilian Personnel Office, and is advisory only. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this order since the general sixty-day notice will previously have notified all agency employees of the requirement to be drug-free.

D. Administrative Relief

If an employee believes his or her position has been wrongly designated a test designated position (TDP), that employee may file an administrative appeal to the designated official who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to the designated official within 15 days of notification, setting forth all relevant information. The designated official shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The official's decision is final and is not subject to further administrative review.

VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

1. Direct observation;
2. Evidence obtained from an arrest or criminal conviction;
3. A verified positive test result; or
4. An employee's voluntary admission.

B. Mandatory Administrative Actions

The President, USUHS shall refer an employee found to use illegal drugs to the EAP, and, if the employee occupies a sensitive position, immediately remove the employee from that position without regard to whether it is a testing designated position. At the discretion of the President, however, and as part of an EAP, an employee may return to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

C. Range of Consequences

The severity of the disciplinary action taken against an employee found to use illegal drugs will depend on the circumstances of each case, and will be consistent with the Executive Order, and includes the full range of disciplinary actions, including removal. USUHS shall initiate disciplinary action against any employee found to use illegal drugs, provided that such action is not required for an employee who voluntarily admits to illegal drug use, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs. Such disciplinary action, consistent with the requirements of the Master Agreement and the Civil Service Reform Act and other statutes, University orders, and regulations, may include any of the following measures but some disciplinary action must be initiated:

1. Reprimanding the employee in writing;
2. Placing the employee in an enforced leave status;
3. Suspending the employee for 14 days or less;

4. Suspending the employee for 15 days or more;
5. Suspending the employee until the employee successfully completes the EAP or until USUHS determines that action other than suspension is more appropriate;
6. Removing the employee from service.

D. Initiation of Mandatory Removal From Service

USUHS shall initiate action to remove an employee for:

1. Refusing to obtain counseling or rehabilitation through an Employee Assistance Program as required by the Executive Order after having been found to use illegal drugs;
2. Having been found not to have refrained from illegal drug use after a first finding of illegal drug use.

All letters to propose and decide on a separation action should be worked out in consultation with the Civilian Personnel Office.

E. Refusal to Take Drug Test When Required

1. An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal.
2. No applicant who refuses to be tested shall be extended an offer of employment.
3. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral

Under Executive Order 12564, USUHS is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except one. If an employee (1) voluntarily admits his or her drug use; (2) completes counseling or an EAP; and (3) and thereafter refrains from drug use, such discipline "is not required."

1. A fundamental purpose of the University's drug testing Plan is to assist employees who themselves are seeking treatment for drug use. This self-referral option allows any employee to step forward and identify his/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP.

2. The decision whether to discipline a voluntary referral will be made by the agency head on a case by case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the University, in determining whether to discipline, shall consider that the employee has come forward voluntarily. In coming forward voluntarily, and consistent with Section XII B, an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall not constitute a second finding of illegal drug use for purposes of considering the disciplinary consequences herein.

3. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit his or her problem, this provision will not be available to an employee who is asked to provide a urine sample when required, or who is found to have illegal drugs pursuant to Sections VIII(A)(1), or VIII(A)(2) and who thereafter requests protection under this provision.

IX. RANDOM TESTING

A. Position Titles Designated for Random Drug Testing

The position titles designated for random drug testing are listed in Appendix A, along with the criteria and procedures applied in designating such positions for drug testing, including the justification for such criteria and procedures.

B. Sensitive Employees in Testing Designated Positions

The Executive Order requires random testing for employees² in sensitive positions that have been designated as testing designated positions. As further specified in Appendix A, the President, USUHS has determined that these ~~positions are occupy a~~ testing designated positions that will be randomly tested. Accompanying the list of testing designated positions are the criteria and procedures used in designating such positions, pursuant to the Act including the justification for such criteria and procedures.

C. Determining The Testing Designated Position

Among the factors the President, USUHS has considered in determining a testing designated position, are the extent to which the University --

1. Considers its mission inconsistent with illegal drug use;
2. Is engaged in law enforcement;
3. Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;
4. Has national security responsibilities;
5. Has drug interdiction responsibilities; or

The extent to which the position considered--

1. Authorizes employees to carry firearms;
2. Gives employees access to sensitive information;
3. Authorizes employees to engage in law enforcement;
4. Requires employees, as a condition of employment, to obtain a security clearance;

5. Requires employees to engage in activities affecting public health or safety.

These positions are characterized by critical safety or security responsibilities as related to the mission of the University. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law, enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence. The President reserves the right to add or delete positions determined to be testing designated positions pursuant to the criteria established in the Executive Order and this plan. Moreover, pursuant to 42 U.S.C. 290ee-1 (b)(2), and the pertinent provisions of the Federal Personnel Manual, the President has determined that all positions which have been or will be designated as testing designated positions under this plan are "sensitive positions" and are therefore exempted from coverage under 42 U.S.E. 290ee-1(b)(1) which provides that no person may be denied or deprived of federal civilian employment or a federal professional or other license or right solely on the basis of prior drug abuse.

D. Implementing Random Testing

In implementing the program of random testing the Drug Program Coordinator shall --

1. Ensure that the means of random selection remains confidential; and
2. Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the University's duty to achieve a drug-free work force.

The number of sensitive employees occupying testing designated positions and the frequency with which random tests will be administered are specified in Appendix A.

E. Notification of Selection

An individual selected for random testing, and the individuals first-line supervisor, shall be notified the same day the test is scheduled, preferably, within two hours of the scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employees name was selected randomly.

F. Deferral of Testing

An employee selected for random drug testing may obtain a deferral of testing if the employee's first-line and second-line supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:

1. In a leave status (sick, annual, administrative or leave without pay);
2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

An employee whose random drug test is deferred will be subject to an unannounced test within the following 60 days.

X. REASONABLE SUSPICION TESTING

A. Grounds

Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
2. A pattern of abnormal conduct or erratic behavior;
3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
4. Information provided either by reliable and credible sources or independently corroborated; or
5. Newly discovered evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

B. Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion.

Supervisors will submit their suspicions and supporting materials to their department chairpersons or activity heads for review and approval for referral of an employee for suspected drug abuse. Associate and Assistant Deans, chairpersons, and activity heads will submit their suspicions and supporting materials to their immediate supervisors for review and approval for referral actions.

When reasonable suspicion has been established, the appropriate supervisor will promptly detail, for the record and in writing, the circumstances which formed the basis to warrant the testing. A written report will be prepared to include, at a minimum, the appropriate dates and times of reported drug related incidents, reliable/credible sources of information, rationale leading to the test, findings of the test, and the action taken.

C. Obtaining the Sample

The employee may be asked to provide the urine sample under observation in accordance with the criteria in Section XIII B.

D. Supervisory Training

In accordance with Section IV, supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion testing.

XI. APPLICANT TESTING

A. Objectives

To maintain the high professional standards of the University's work force, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of USUHS. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within the University, and will provide for a safer work environment.

B. Extent of Testing

Drug testing shall be required of all individuals selected for employment with the USUHS in a testing designated position.

C. Vacancy Announcements

Every vacancy announcement for positions designated for applicant testing shall state:

"All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment."

In addition, the applicant will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided applicants in some other manner.

D. Procedures

The DPC shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours of notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by the MRO, or the staff of the MRO, to determine whether the individual is licitly using an otherwise illegal drug.

E. Personnel Officials

Upon notification that an individual has been tentatively selected for employment with USUHS, the Director, Civilian Personnel Office shall assure, after consultation with the MRO, or the staff of the MRO, that a drug test has been conducted on that individual and determine whether the test result is a verified positive result.

F. Consequences

USUHS will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant may not reapply to the University for a period of six months. The Personnel Officer working on the applicants certificate shall be directed to object to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to public employment or failure to support the goals of the University. USUHS shall inform such applicant that a confirmed presence of drug in the applicants urine precludes the University from hiring the applicant.

XII. ADDITIONAL TYPES OF DRUG TESTING

A. Accident or Unsafe Practice Testing

USUHS is committed to providing a safe and secure work environment. Employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to others or the overall operation of the University, may be subject to testing. Based on the circumstances of the accident or unsafe act, the Department Chairman/Activity Head or attending physician may initiate testing when there is:

1. Loss of life or limb or other serious personal injury;
2. Property loss in excess of \$5,000.

B. Voluntary Testing

In order to demonstrate their commitment to the University's goal of a drug-free workplace and to set an example for other federal employees, employees not in testing designated positions may volunteer for unannounced random testing by notifying the DPC. These employees will then be included in the pool of testing designated positions subject to random testing, and be subject to the same conditions and procedures, including the provisions of Section VIII(F). Volunteers shall remain in the TDP pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying the DPC of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing

All employees referred through administrative channel who undergo a counseling or rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing following completion for a period of one year. Such employees shall be tested as the amount stipulated in the abeyance contract, or, in the alternative, at an increased frequency up to 12 tests within a one year period through in a separate random pool. Such testing is distinct from testing which may be imposed as a component of the EAP.

XIII. TEST PROCEDURES IN GENERAL

A. Technical Guidelines for Drug Testing

USUHS shall adhere to all scientific and technical guidelines for drug testing programs promulgated by HHS consistent with the authority granted by Executive Order 12564, and to the requirements of Section 503 of the Act. The University's drug testing program shall have professionally trained collection personnel, a laboratory certification program, rigorous analytical standards and quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

B. Privacy Assured

Any individual subject to testing under this order, shall be permitted to provide urine specimens in private, and in a rest-room stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel, of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when --

1. The individual is being tested pursuant to Section X relating to reasonable suspicion testing;
2. Facts and circumstances suggest that the individual is an illegal drug user;
3. Facts and circumstances suggest that the individual is under the influence of drugs at the time of the test;
4. The individual has previously been found by the University to be an illegal drug user;
5. Facts and circumstances suggest that the individual has equipment or implements capable of tampering or altering urine samples; or
6. The individual has previously tampered with a sample.

C. Failure to Appear for Testing

Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of

employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPC to obtain guidance on action to be taken.

D. Opportunity to Justify a Positive Test Result

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the HHS Guidelines. For example, the MRO may choose to conduct employee medical interview, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to:

1. A valid prescription; or
2. A verification from the individual's physician verifying a valid prescription.

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall immediately contact the EAP Administrator, upon obtaining a verified positive test result.

E. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the program, the employee may be exempted from the random testing designated position pool for a period not to exceed sixty days, or for a time period specified in an abeyance contract or rehabilitation plan approved by the President, USUHS. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XII.c.

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Scientific and Technical Guidelines promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

The laboratory may disclose confirmed laboratory test results only to the MRO or the staff of the MRO. Any positive result which the MRO justifies by licit and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test Results will be protected under the provisions of the Privacy Act, 5 U.S.C. 552a, et seq., and Section 503(e) of the Act, and may not be released in violation of either Act. The MRO, or the staff of the MRO, may maintain only those records necessary for compliance with this order. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include personal identifying information on any employee.

In order to comply with Section 503(e) of the Act, the results of a drug test of a University employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be --

1. To the MRO;
2. To the EAP Administrator in which the employee is receiving counseling or treatment or is otherwise participating;
3. To any supervisory or management official within the University having authority to take adverse personnel action against such employee; or
4. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

For purposes of this Section, "management official" includes any management or government official whose duties necessitate review of the test results in order to process adverse personnel action against the employee. In addition, test results with all identifying information removed shall also be made available to USUHS personnel, including the DPC, for data collection and other activities necessary to comply with Section 503(f) of the Act.

B. Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, have access to any records relating to--

1. Such employees drug test; and
2. The results of any relevant certification, review, or revocation of proceedings, as referred to in Section 503(a)(1)(A)(ii)(III) of the Act.

Except as authorized by law, an applicant who is the subject of a drug test, however, shall not be entitled to this information.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this order and to make information readily retrievable, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this order.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the Civilian Personnel Office. Such shall remain confidential, locked in a combination safe, with only authorized individuals who have a "need-to-know" having access to them.

D. Employment Assistance Program Records

The EAP Administrator shall maintain only those records necessary to comply with this order. After an employee is referred to the EAP, the Program Personnel will maintain all records necessary to carry out their duties. All medical and or rehabilitation records concerning the employees drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 C.F.R. Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the University for verification of treatment or for a general evaluation of treatment progress. (42 C.F.R. 2.1 et seq. (1986), revised regulations promulgated at 52 F.R. 21796, June 9, 1987).

E. Maintenance of Records

USUHS shall establish or amend a record keeping system to maintain the records of the University's Drug Free Workplace Program consistent with the University's Privacy Act System of Records and with all applicable federal laws, rules and regulations regarding confidentiality of records including the Privacy Act 5 U.S.C. 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the President, USUHS. The record keeping system should capture sufficient documents to meet the operational and statistical needs of this order, and include:

1. Notices of verified positive test results referred by the MRO;
2. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;
3. Anonymous statistical reports; and
4. Other documents the DPC, MRO, or EAP Administrator deems necessary for efficient compliance with this order.

F. Records Maintained By Government Contractors

Any contractor hired to satisfy any part of this order shall comply with the confidentiality requirements of this order, and all applicable federal laws, rules, regulations and guidelines.

G. Statistical Information

The DPC shall collect and compile anonymous statistical data for reporting the number of--

1. Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered;
2. Verified positive test results;
3. Voluntary drug counseling referrals;
4. Involuntary drug counseling referrals;
5. Terminations or denial of employment offers resulting from refusal to submit to testing;
6. Terminations or denial of employment offers resulting from alteration of specimens;

7. Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling program; and
8. Employees who successfully complete EAP.

These data, along with other pertinent information, shall be compiled for inclusion in the University's annual report to Congress required by Section 503(f) of the Act. This data shall also be provided to HHS on a semi-annual basis to assist in overall program evaluation and to determine whether changes to the HHS Guidelines may be required.

APPENDIX A

"TESTING DESIGNATED POSITIONS" AT THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

The President, Uniformed Services University of the Health Sciences has designated the following civilian positions for inclusion in the University's Drug Testing Program:

Random testing will be accomplished on a quarterly basis with approximately 10 percent of the testing pool being tested each quarter.

TITLE/SERIES

All persons with Top Secret security clearances (Noncritical-Sensitive).

Positions at USUHS held by persons currently with Top Secret security clearances:

President, USUHS
Level IV

Associate Dean for Operations
ES-5

Chairman, Department of Military Medicine
Schedule A

Chairman, Department of Psychiatry
Schedule A

Professional Faculty Members
Schedule A

Chief, Support Services
GS-080

Persons possessing Top Secret security clearances at USUHS operate largely independently and may have access to classified defense related medical research and intelligence data. If impaired by use of controlled substances, these persons may be in a position to divulge information harmful to the interests of the United States.

TITLE/SERIES

Chairman, Board of Regents (Special-Sensitive).

Presidential Appointment

By virtue of being a Presidential Appointment, this position is among the most sensitive in the Executive Branch and the highest level of confidence is required. Since the Chairman can operate relatively independently, he must always be able to communicate clearly, often about controversial subjects, and have a keen sense of propriety. Abuse of controlled substances could result in behavior or statements highly embarrassing to the U.S. Government and/or the Executive Branch.

TITLE/SERIES

Vehicle Operators (Noncritical-Sensitive)

Immediately Under Vehicle Operations

Series: WG-5703 - Motor Vehicle Operators

Persons in this category routinely drive vehicles for the purpose of transporting classified Arm/or sensitive materials, as well as, senior DoD officials who may be discussing sensitive information. Safe vehicle operation requires keen sensory perception, the capacity for rapid mental processing of sensory input, and neuromuscular coordination.

Drug usage could result in divulgence or loss of classified or sensitive information as well as loss of life or injury and damage to or destruction of property. Abuse of controlled substances by a vehicle operator could endanger his/her passengers, drivers and passengers in other vehicles, and pedestrians.

TITLE/SERIES CHANGE PER SANFORD 1/89

All persons having access to Schedule I and certain Schedule II drugs, exclusive of barbituric anesthetics and buffers (Noncritical-Sensitive)

Positions included in this category include:

Schedule A Faculty

Bio-lab Techs (Series GS-404)

Persons with relatively unsupervised access to Schedule I and Schedule II controlled substances are at increased risk of abusing drugs if placed under great personal stress.

Depending upon the exact responsibilities of an incumbent, safe operation of laboratory equipment and use of hazardous materials such as radioisotopes, compressed gases, and highly toxic substances requires clear mental faculties and, frequently, neuromuscular coordination.

Also depending upon the exact duties associated with any given position, drug use could result in loss of life, personal injury, and damage to or destruction of property. Abuse of controlled substances could lead to lethal laboratory accidents which could endanger large numbers of University personnel. In addition, should an abuser of Schedule I and II drugs operate a motor vehicle when leaving the work site, he/she could endanger the general public.

APPENDIX B
UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES
DRUGS FOR WHICH INDIVIDUALS ARE TESTED

·Opiates
·Marihuana
·Cocaine
·Amphetamine
·Phencyclidine
pep

Marijuana



INSTRUCTIONAL AND
RESEARCH SUPPORT

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES
F. EDWARD HÉBERT SCHOOL OF MEDICINE
4301 JONES BRIDGE ROAD
BETHESDA, MARYLAND 20814-4799




TEACHING HOSPITALS
WALTER REED ARMY MEDICAL CENTER
NAVAL HOSPITAL, BETHESDA
MALCOLM GROW AIR FORCE MEDICAL CENTER
WILFORD HALL AIR FORCE MEDICAL CENTER

10 January 1989

MEMORANDUM FOR ASSOCIATE DEAN FOR OPERATIONS

SUBJECT: Appendix to Drug-Free Workplace Plan

1. The enclosed appendix (C) to the Drug-Free Workplace Plan is submitted for your review and forwarding to Dr. Sanford for signature.
2. The appendix has been prepared in response to a memo from Sharon H. Cooper, Drug Policy and Enforcement, Office of the Secretary of Defense, and the guidance contained therein (Enclosure 2). The appendix has been coordinated with our Office of General Counsel.



ROBERT R. JORGENSEN, D.V.M., M.P.H., M.S.
Assistant Dean, Teaching & Research Support

2 Enclosures



APPENDIX C

1. The Uniformed Services University of the Health Sciences (USUHS) hereby adopts the following amendments to the Drug-Free Workplace plan referenced and attached.

a. The following language is adopted as a free standing paragraph at the end of the section in the plan entitled "policy" or "statement of policy":

It is USUHS policy that its workplace be free from the illegal use, possession, or distribution of controlled substances, (as specified in Schedules I through V, as defined in 21 U.S.C. 802(6) and listed in Part B, Subchapter 13 of that Title) by the officers and employees of USUHS. The possession and distribution of controlled substances will be dealt with promptly in accordance with legal and administrative disciplinary procedures. However, the policy's primary goal is to ensure that illegal drug use is eliminated and that the USUHS workplace be safe, healthful, productive, and secure.

b. In any references to grounds for "reasonable suspicion testing," the term "trafficking" shall also mean "distribution."

c. In addition to all grounds contained in this plan, there shall be grounds for reasonable suspicion testing of an employee if the employee is the focus of criminal investigation into the illegal use, possession, or distribution of controlled substances.

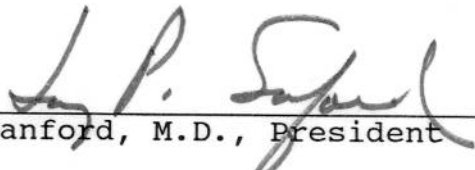
d. Where authorities and guidance are cited in the plan as references, the following authority and guidance are added:

(i) Authority: Section 628 of the Treasury, Postal Service, and General Government Appropriations Act of 1989, Pub. L. 100-440, as amended.

(ii) Guidance: Office of Personnel Management (OPM) Federal Personnel Manual (FPM) Letter 792-18, December 30, 1988, setting forth guidelines to agencies, departments, and instrumentalities in establishing a drug-free workplace pursuant to Pub. L. 100-440.

2. This amendment is effective upon the signature of the agency head or the senior management official authorized to sign for the agency head.

12 January 1989
Date


Jay P. Sanford, M.D., President